

STATE OF MICHIGAN
COURT OF APPEALS

FRED BURGESS,

Plaintiff-Appellant,

v

DONALD BERNHARDT and MICHAEL
BERNHARDT,

Defendants-Appellees.

UNPUBLISHED

June 12, 2007

No. 268569

Otsego Circuit Court

LC No. 04-010786-CK

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for costs and attorney fees on the basis that plaintiff's complaint was frivolous. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Plaintiff, acting without the assistance of an attorney, filed a document seeking temporary and permanent injunctions to halt construction by defendants of a house in the Fawn Lake Forest Subdivision. Plaintiff noted that he was acting with power of attorney for his mother Rosemary who owns a lot in the Fawn Lake Forest Subdivision. The issues whether plaintiff had standing to sue, was the real party in interest, and whether he was engaged in the unauthorized practice of law were raised by defendants in their responsive pleadings. However, the trial court did not immediately address the matter.

Several months into the litigation, plaintiff wrote to the trial court stating, "I disqualify myself to act in pro per in the present case and request the court to declare all filings made by me in this case nullities until such time as they have been amended by an attorney licensed to practice law in the state of Michigan." In the letter, plaintiff acknowledged that he had engaged in the unauthorized practice of law and requested that the court grant him additional time to find an attorney to represent his mother. At a pretrial conference held several months later, the court agreed to give plaintiff additional time to find an attorney, but cautioned plaintiff that the case would be dismissed if plaintiff did not have an attorney for his mother by the time of the final pretrial conference. After plaintiff failed to obtain an attorney before the final pretrial conference, the court dismissed the matter without prejudice. Defendants subsequently moved for an award of costs and attorney fees pursuant to MCL 600.2591, arguing that plaintiff's complaint was frivolous. The trial court granted the motion. Plaintiff appeals the award of

sanctions. Defendants assert that this Court lacks jurisdiction to hear an appeal from the trial court's dismissal of the action itself, but plaintiff does not appeal that dismissal, and defendants concede that this Court has jurisdiction to hear the appeal of the sanctions award.

Plaintiff first asserts that the trial court erred by finding this action frivolous. "A trial court's finding that an action is frivolous is reviewed for clear error." *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). The trial court's decision with regard to the amount of sanctions imposed is reviewed for an abuse of discretion. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

MCR 2.201(B) requires that an action be prosecuted by the real party in interest. Nonlawyers have a constitutional right to prosecute their own suits in their own proper persons. Const 1962, art. 1, § 13. However, plaintiff brought and attempted to prosecute this action on behalf of his mother, who was purportedly the real party in interest. "Appellant is not, in other words, representing himself in this litigation. Instead, he is representing a client, [his mother]. Thus, he is engaged in the unauthorized practice of law." *Shenkman v Bragman*, 261 Mich App 412, 416; 682 NW2d 516 (2004). See also, *Chisholm v Rueckhaus*, 124 NM 255, 257; 948 P2d 707 (1997) ("The authority to represent another as a party does not equal the authority to practice law on their behalf."). Indeed, plaintiff admitted to the trial court that he was engaged in the unauthorized practice of law. Accordingly, the trial court's decision to sanction plaintiff for filing a frivolous lawsuit was not clear error, as plaintiff's "legal position was devoid of arguable legal merit." MCL 600.2591(3)(iii).

Plaintiff also asserts that the trial court erred in awarding sanctions pursuant to MCL 600.2591 because defendants should have sought sanctions earlier pursuant to MCR 2.114(E). Plaintiff has not cited any authority supporting this proposition. MCR 2.114(E) concerns the filing of frivolous documents, while MCL 600.2591 concerns the filing of actions that are frivolous in their entirety. *Maryland Cas Co v Allen*, 221 Mich App 26, 32 n 1; 561 NW2d 103 (1997). Even if plaintiff could have been sanctioned at an earlier time under MCR 2.114(E), as long as the motion for costs brought pursuant to MCL 600.2591 was filed within a reasonable time of when the prevailing party was determined, the motion for sanctions brought pursuant to MCL 600.2591 was timely. *Id.* at 31. Further, the trial court examined the attorney fees requested, determined defendants had not unreasonably prolonged the proceedings, and further determined that the requested fees were reasonable. Plaintiff has failed to show that the court abused its discretion in this regard. Accordingly, we will not reverse the amount of sanctions imposed. *In re Costs & Attorney Fees*, *supra* at 104.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio